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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,309	12/05/2003	Gregory M. Dobbs	965-009 Con2	2175
20874	7590	01/23/2006		
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			EXAMINER FLANIGAN, ALLEN J	
			ART UNIT 3753	PAPER NUMBER

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,309

Applicant(s)

DOBBS ET AL.

Examiner

Allen J. Flanigan

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-52 is/are pending in the application.
- 4a) Of the above claim(s) 39, 40, 44, 45 and 48-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 37, 38, 41-43, 46, and 47 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

Applicant has been notified that claims in this application conflict with claims in copending application 10/608,809. Current PTO practice consistent with potential patent term adjustments for interference dictates that any claims that potentially interfere among related pending applications be sorted from claims that do not interfere. See MPEP 2304.01(d):

This way examination can proceed for any claims that do not interfere without the delay that will result from the interference. Interfering claims of an applicant are "conflicting claims" within the meaning of 37 CFR1.78(b). The examiner may require consolidation of such claims into any disclosure of the applicant that provides support for the claims. 35 U.S.C. 132(a).

As noted previously, claims 37 and 38 clearly conflict with claims 41 and 45 of the copending application that involves a potential interference with a US Patent. Dependent claim 41 is included with the above claims based on the admission by the applicant made on page 2 of the specification. Specifically, in discussing the prior art in ventilators, they indicate clearly that crossflow, concurrent flow, and counterflow arrangements are all known in the art. Thus, since claim 41 differs from potentially conflicting/interfering claims only in subject matter deemed to be obvious by applicant's own admission of its well-known nature, claim 41 is properly grouped with claims 37 and 38.

Thus, the pending claims in the application are sorted into three groups:

Nonelected (39, 40, 44, 45, and 48-52)

Conflicting (37, 38, and 41)

Nonconflicting (42, 43, 46, and 47).

Sorting of the claims is deemed appropriate since the applicant clearly has support for the conflicting claims in the disclosure of the copending application. Thus, applicant is required to cancel or consolidate the conflicting claims listed above into copending application 10/608,809. The nonconflicting claims listed above depend from conflicting claims, and the appropriate action for applicant to take, subsequent to cancellation or consolidation of the conflicting claims, is to rewrite the nonconflicting dependent claims as independent claims incorporating the subject matter of the claim(s) from which they depend.

Applicant is given ONE MONTH from the date of mailing of this Office action to take appropriate action consistent with the above requirement.

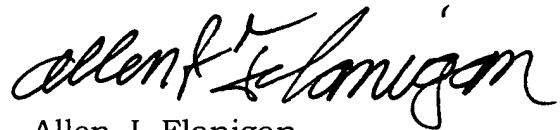
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The

Art Unit: 3753

fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Allen J. Flanigan". The signature is cursive and stylized, with the first name "Allen" and last name "Flanigan" clearly legible.

Allen J. Flanigan  
Primary Examiner  
Art Unit 3753

AJF